

PROSKAUER ROSE LLP
Katharine H. Parker (KHP-7669)
Steven P. Gonzalez (SG-0066)
1585 Broadway
New York, New York 10036-8299
Phone: (212) 969-3000
Fax: (212) 969-2900
Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTIE FARBRY,

: Case No.: 05 CV 6526 (JGK)(GWG)

Plaintiff,

-against-

: **NOTICE OF REMOVAL**

NMU PENSION & WELFARE PLAN,

: Bronx County Civil Court
Small Claims # SCB 2030/05

Defendant.

X

Defendant NMU Pension & Welfare Plan (the "Plan"), by its attorneys, Proskauer Rose LLP, pursuant to the provisions of 28 U.S.C. §§ 1331, 1441 and 1446, respectfully give notice of the removal of this action from the Civil Court of the City of New York, Bronx County, and states as follows:

1. This action was commenced on or about June 28, 2005 under Small Claims Index Number SCB 2030/05, in the Civil Court of the City of New York, Bronx County. No further proceedings have been had herein. A true and correct copy of the Notice of Claim and Summons to Appear is annexed hereto as Exhibit 1.

2. This action is being removed to federal court because it seeks to recover certain pension benefits from the Plan, which is an “employee benefit plan” within the meaning of and governed by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001 et seq.

3. ERISA preempts the state law claims alleged in plaintiff’s Notice of Claim and provides the exclusive remedies for recovery of benefits claimed under employee benefit plans. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B).

4. This court has original “federal question” jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e) and (f). As a civil action founded on a right or claim arising under the laws of the United States, this action is properly removable to this Court pursuant to the provisions of 28 U.S.C. § 1441, et seq.

5. This Notice of Removal is being filed within thirty (30) days after receipt by the Plan of the Notice of Claim and Summons to Appear and is timely filed under 28 U.S.C. § 1446(b).

6. Promptly after filing this Notice of Removal, a true copy of this Notice will be filed with the Clerk of the Civil Court of the City of New York, Bronx County as required by 28 U.S.C. § 1446(d).

8. Written notice of the filing of the Notice of Removal will be given to Plaintiff pursuant to 28 U.S.C. § 1446(d).

9. By filing this Notice of Removal, the Plan does not waive any defenses which may be available to it.

WHEREFORE, Defendant respectfully requests that this action proceed in this Court as a matter properly removed thereto.

Dated: New York, New York
July 19, 2005

PROSKAUER ROSE LLP

By: 
Steven P. Gonzalez (SG-0066)
1585 Broadway
New York, New York 10036-8299
Phone: (212) 969-3336
Fax: (212) 969-2900

Attorneys for Defendant

TO: Mattie Farmbry
1882 Grand Concourse, #4-A
Bronx, New York 10457

Pro Se Plaintiff

Exhibit 1

CIVIL COURT OF THE CITY OF NEW YORK
SMALL CLAIMS PART
851 GRAND CONCOURSE
BRONX, NY 10451-2937

TO: Attorney Addressed to:
U.S. DEPT. OF HOMELAND SECURITY
PENSION & WELFARE PLAN
360 WEST 31ST ST.
NEW YORK, NY 10001-2937

NOTICE TO DEFENDANT
You (it should not be ignored) your defendant may have serious consequences
if you do not appear in Court on the date and time specified below.
YOU MUST BRING THIS NOTICE WITH YOU EACH TIME YOU APPEAR IN COURT ON THIS CASE.

SUMMONS TO APPEAR This claim is issued in aid of a hearing to be held in the Bronx County Court on the following date and time:

351 Grand Concourse (Room B129)
Bronx, New York 10451 (Bronx Park)
On Monday, August 1, 2005 at 6:00 PM

FOR SOMEONE AUTHORIZED TO RECEIVED NOTIFICATION (see below) to appear in Court to represent yourself or your child. If you do not appear in Court on the date and time specified above, you will be found in contempt of Court and may be held in jail until you appear in Court. You may be held in jail even if you are unable to pay fines or costs imposed by the Court.

BY DEFECTIVE MAIL THOUGH YOU HAVE BEEN SERVED WITH THIS NOTICE, IT IS YOUR RESPONSIBILITY TO CHECK WITH THE CLERK'S OFFICE TO DETERMINE WHETHER YOU HAVE BEEN SERVED WITH THIS NOTICE.

DATED June 30, 2005

CLAMANT

A Guide to Small Claims Court is available at the court listed above.
ESTA INFORMACIÓN ESTÁ D

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SMALL CLAIMS PART
851 GRAND CONCOURSE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MATTIE FARBRY,

Plaintiff,

Index No. 05 CV 6526 (JGK)

-against-

AFFIDAVIT OF SERVICE

NMU PENSION & WELFARE PLAN

Defendant,

-----X

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

Jesus Hernandez, being duly sworn, deposes and states:

1. I am not a party to this proceeding, am over 18 years of age, and reside in Kings County, New York.

2. On July 19, 2005, at approximately 4:20 pm, I served the **NOTICE OF FILING OF NOTICE OF REMOVAL; NOTICE OF REMOVAL; INDIVIDUAL PRACTICES OF JUDGE JOHN G. KOELTL; INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE GABRIEL W. GORENSTEIN; CONSENT TO EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE OVER DISPOSITIVE MOTIONS DESCRIBED UNDER 28 U.S.C. 36(b)(1)(B); NOTICE, CONSENT, AND ORDER OF REFERENCE-EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE; GUIDELINES FOR ELECTRONIC CASE FILING; 3rd AMENDED INSTRUCTIONS FOR FILING AN ELECTRONIC CASE OR APPEAL; PROCEDURE FOR ELECTRONIC CASE FILING; ANSWER date 7/19/05**; by leaving said documents for Ms. Mattie Farmbry at 1882 Grand Concourse Apt. 4-A, Bronx, New York 10457.

A description of the door is as follows:

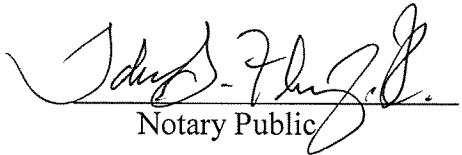
A light grayish metal door with peephole with a handle and key assembly.

3. Deponent also states that on Tuesday, July 19, 2005, Deponent served the aforementioned documents upon, Ms. Mattie Farmbry, by depositing a true and correct copy thereof, enclosed, in a securely sealed, fully post paid, First Class mail envelope, in an official depository under the exclusive care and custody if the U.S. Postal Service within the State of New York, addressed to the herein named witness as follows:

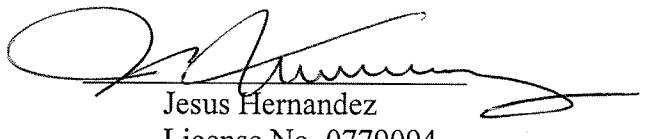
Ms. Mattie Farmbry
1882 Grand Concourse, Apt. 4-A
Bronx, NY 10457

4. Said envelope bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerns an action against the addressee.

Sworn to before me this
19th day of July, 2005


Notary Public

JOHN G. FLEMING, JR.
Notary Public, State of New York
No. 01FL6072661
Qualified in New York County
Certificate filed in New York County
Commission Expires April 8, 2006


Jesus Hernandez
License No. 0779094